



**Western Cape  
Government**

Environmental Affairs &  
Development Planning

**BETTER TOGETHER.**

---

# **Western Cape Land Use Planning Bill - Explanatory Memorandum**

# **PROVINCE OF THE WESTERN CAPE**

## **WESTERN CAPE LAND USE PLANNING BILL, 2012**

### **EXPLANATORY MEMORANDUM**

The Western Cape Land Use Planning Bill, 2012 responds to the need for a modernised and efficient system of land use planning which facilitates sustainable development in the Province. It seeks to establish a planning framework that places emphasis on the effective integration of planning activities across the provincial and municipal governments so as to facilitate appropriate development. The Bill was also necessitated by a rapidly changing legal framework surrounding land use planning.

#### **Changing legal framework**

The 1996 Constitution distributed planning powers across all three spheres of government. It thereby radically changed the division of powers between levels of government. However, legislation has not kept track with those constitutional changes as development management is currently still being conducted in terms of legislation that predates the Constitution. A 2009 Constitutional Court judgment provided greater clarity with regard to the powers of municipalities. Further judgments of the Supreme Court of Appeal and the High Courts are starting to provide further clarity on the division of powers. This Bill gives further content to the constitutional division and seeks to settle the uncertainty that is bedevilling this sector.

#### **Objectives**

The Bill centres around five objectives. First, it establishes a firm link between forward planning and development management by requiring development management decisions to be aligned with spatial development frameworks. Secondly, it seeks to clarify municipal and provincial roles in land use planning. Thirdly, it puts in place an 'asymmetric' planning system which caters for various levels of planning capability. Fourthly, it seeks to find a way to deal with objections against land use decisions and disputes between levels of government. Fifthly, the Bill seeks to rationalise the current fragmented legislative framework and create mechanisms for 'one stop' applications. It consolidates the various land use control instruments (such as rezoning, subdivision, removal of restrictions etc.) into one provincial menu of instruments that can be addressed in one application to the municipality.

#### **Provincial and municipal responsibilities**

Chapter II of the Bill sets out a broad division of responsibilities between the provincial government and municipalities in the Province. It provides further content to the powers set out in the Constitution and will ensure stability in the sector.

### *Municipality*

The Bill positions the municipality as the sphere of government that is responsible for adopting a municipal spatial development framework, adopting by-laws to regulate planning in the municipal areas and deciding on all land use applications in the municipal area.

### *Provincial government*

The provincial government is made responsible for adopting a Provincial Spatial Development Framework and regional spatial development frameworks. Furthermore the provincial government must regulate, support and monitor municipal land use planning activity. The provincial government is responsible for deciding land use applications that have a distinct provincial dimension. This provincial dimension applies when the development is of a scale that transcends municipal boundaries or when the development directly impacts the provincial government's responsibility with regard to the environment, agriculture, provincial tourism etc. Developments of this category will need both municipal and provincial approval.

### **Spatial development frameworks**

Chapter III regulates the drafting and adoption of spatial development frameworks. The formulation and content of these plans are critical as they will start to balance economic, social and environmental interests in the future shape of a particular area. The Bill will demand two levels of forward planning. The provincial government will adopt a Provincial Spatial Development Framework (PSDF) and the municipality will adopt a municipal spatial development framework (MSDF). In some instances, the provincial government may adopt a regional spatial development framework (RSDF).

The Bill provides for the participation of communities, stakeholders and municipalities in the drafting of the PSDF and RSDFs. The drafting and approval of the MSDF is, to a large extent, already regulated by the Local Government: Municipal Systems Act 32 of 2000 which instructs municipalities to adopt a 'spatial development framework' as part of its Integrated Development Plan. The Bill complements the Municipal Systems Act with provisions that deal with –

- collaboration between the provincial government and the municipality in the drafting of the MSDF; and
- the possibility for the Minister to request a neutral body, the Land Use Planning Board, to advise the municipality and the Minister on differences of opinion with regard to the plan for the municipal area;

Spatial development frameworks must be reviewed every 10 years. In between, they may be amended on application.

### **Development management**

Chapter V regulates the various instruments for development management. It regulates the adoption by municipalities of zoning schemes and a zoning scheme by-law. It furthermore regulates the menu of instruments for development management, namely rezoning, departure, consent use, subdivision, consolidation, removal of restrictions and conditions. The Bill provides an overall framework within which municipalities must adopt their own rules for how to use these instruments.

### **By-laws on development management**

The 1996 Constitution does not allow the provincial government to regulate the detail of municipal planning. Municipalities are mandated by the Constitution to pass by-laws to regulate how they consider land use applications. This Bill contains minimum standards that municipal by-laws must comply with in order to be valid. These standards deal with issues such as community participation in decision making, consultation with other organs of state, the role of registered planners, maximum decision times, enforcement of use rights etc.

### *Transitional regulations*

The capacity and appetite on the part of municipalities to draft such by-laws is uneven. This is why the Bill provides for a transitional mechanism. The Bill enables municipalities to conduct development management in terms of provincial regulations until the municipality has adopted the relevant by-law. These transitional regulations will be promulgated together with the coming into effect of the Act so as to enable uninterrupted land use planning.

### **Alignment of provincial and municipal planning**

Chapter V puts forward a system for the alignment of provincial and municipal forward plans. It demands that land use decisions are aligned with forward planning as expressed in the applicable spatial development frameworks. When development cannot be justified in terms of the applicable spatial development frameworks, it may not proceed without an amendment to the relevant spatial development framework.

### **Land use principles and objectives**

Chapter VI presents land use principles and objectives that apply province-wide. These principles express the provincial government's concern with regard to reversing apartheid spatial patterns, maximising economic potential, efficient and responsible development management, responsive governance, protection of agricultural, tourism and heritage resources, transport-wise planning, climate change adaptation and mitigation etc. These principles must be taken into account by any competent authority when it regulates planning, adopts plans or takes land use decisions.

### **Land Use Planning Board**

Chapter VII establishes a provincial Land Use Planning Board. The role of the Board will be twofold. It will hear objections against land use decisions and it will assist in the resolution of intergovernmental disputes. The Board will be appointed by the Minister but upon nominations from the planning sector. The Bill will ensure that the Board will comprise of experts and that it will function independently from the Minister.

#### *Objections against land use decisions*

The Board will hear objections against land use decisions taken by municipalities and the Minister. The current system of direct appeals to the provincial government needs to make way for a system that places greater emphasis on the responsibility of municipalities to deal with appeals. The principle is to utilise courts as a last resort only. The Board will issue a recommendation to the municipality or the Minister who must then reconsider its decision.

#### *Intergovernmental disputes*

Furthermore, the Board will issue recommendations on the resolution of disputes between municipalities and the provincial government. These disputes may deal with issues such as the content of a spatial development framework or the need for a provincial decision on a particular land use application, approved by the municipality.